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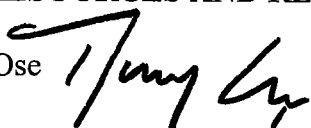
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February 18, 2004

MEMORANDUM FOR MEMBERS OF THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for February 25, 2004 Hearing, "How to Improve
Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations –
Part II"

On Wednesday, February 25, 2004, at 10:00 a.m., in Room 2247 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on the annual regulatory accounting statement and associated report required to be submitted with the President's Budget. The hearing is entitled, "How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations – Part II."

In 1996¹, Congress required the Office of Management and Budget (OMB) to submit its first regulatory accounting report by September 30, 1997. In 1997, Congress continued this requirement. In 1998, Congress changed the report's due date to coincide with the President's Budget. Congress established this simultaneous deadline so that Congress and the public could be given an opportunity to simultaneously review both the on-budget and off-budget costs associated with each Federal agency and each Federal agency program imposing regulatory or paperwork burdens on the public. Finally, in 2000, Congress made this a permanent annual reporting requirement. The law requires OMB to estimate the total annual costs and benefits for all Federal rules and paperwork in the aggregate, by agency, by agency program, and by major rule, and to include an associated report on the impacts of Federal rules and paperwork. The philosophy behind these laws was the belief that the public has the right to know the costs and benefits of Federal rules and paperwork and the right to open and accountable government.

¹The requirements for OMB's regulatory accounting reports were enacted as: Sec. 645 of the Treasury, Postal Services and General Government Appropriations Act for 1997 (P.L. 104-208); Sec. 625 of the Treasury and General Government Appropriations Act for 1998 (P.L. 105-61); Sec. 638 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277); Sec. 628 of the Treasury and General Government Appropriations Act for 2000 (P.L. 106-58); and Sec. 624 of the Treasury and General Government Appropriations Act for 2001 (P.L. 106-554).

An October 2001 report, entitled “The Impact of Regulatory Costs on Small Firms,” by Drs. W. Mark Crain and Thomas D. Hopkins, commissioned by the Small Business Administration’s (SBA) Office of Advocacy, estimated that, in 2000, Americans spent \$843 billion to comply with Federal regulations. These off-budget costs to Americans are on top of the costs reflected in the President’s Budget. In September 2002, Dr. Crain co-authored a study entitled “Compliance Costs of Federal Workplace Regulations: Survey Results for U.S. Manufacturers.” This paper revealed that, in 2000, manufacturers spent an average of \$2.2 million per firm (or \$1,700 per employee) to comply with Federal workplace regulations. Also, in September 2002, Dr. Joseph M. Johnson published a study entitled “A Review and Synthesis of the Costs of Workplace Regulation.” This paper compiled available estimates of the costs of different workplace regulations, totaling at least \$91 billion annually.

On March 12, 2002, this Subcommittee held a hearing entitled “Regulatory Accounting: Costs and Benefits of Federal Regulations.” It was intended to be a hearing about the fifth report due February 4th; however, OMB did not publish its draft report until after the hearing (i.e., on March 18th). On March 11, 2003, this Subcommittee held a hearing entitled “How to Improve Regulatory Accounting: Costs, Benefits, and Impacts of Federal Regulations.” It considered the draft sixth report that was published on February 3rd, the same day as release of the President’s Fiscal Year (FY) 2004 Budget. Unfortunately, it was not part of the various Budget documents; instead, it was published in the Federal Register on the same day as release of the Budget. This approach was not particularly useful to the Government Reform, Budget and Appropriations Committees since it prevented a side-by-side comparison for analytic purposes of the on-budget and off-budget costs associated with each major regulatory agency (e.g., Department of Labor (DOL)) and each of its regulatory programs (e.g., DOL’s Occupational Safety and Health Administration (OSHA)).

This year, OMB missed the statutory deadline for simultaneous reporting with the February 2, 2004 release of the FY 2005 Budget². As a consequence, in their Views and Estimates on the FY 2005 Budget for the Budget Committees, Congressional Subcommittees, including this Subcommittee, were unable to analyze the full impact of the President’s Budget for the major regulatory agencies and their programs.

To date, OMB has issued six final regulatory accounting reports - in September 1997, January 1999 (dated 1998), June 2000, December 2001, December 2002, and September 2003 (see attached chart). All six did not meet some or all of the statutorily-required content requirements. For example, all six were not presented as an accounting statement and both the February draft and September final 2003 reports did not include the required associated report on impacts, e.g., on small business.

The Subcommittee annually submits comments both on OMB’s draft and final reports. However, in its September 2003 final report, OMB did not include the Subcommittee as a commenter and, thus, did not respond to many of the March 18, 2003 comments submitted by

² On February 13, 2004, OMB released its draft report but it has not yet been published in the Federal Register.

this Subcommittee. After release of the final report, the Subcommittee submitted September 25th comments. In addition, the Schrock-chaired Small Business Subcommittee submitted October 24th comments on resources that OMB can use to include a full impacts report on small business in its future reports, starting with the report due February 2, 2004.

Partially in response to this Subcommittee's oversight hearings and comment letters, OMB has progressively made improvements, such as adding agency level detail for eight agencies in March 2002, and adding agency program level detail for seven major regulatory programs in February 2003. For the Budget and for paperwork reduction, OMB requires agencies to annually provide detail by agency program. In March 2002, I wrote OMB stating, "To assist OMB in preparing estimates by agency and by agency program, I recommend that OMB issue annual OMB Bulletins to the agencies like it does for paperwork reduction. ... OMB's regulatory accounting Bulletins should require each agency to submit estimates of its aggregate and new regulatory burden for the agency as a whole and for each of the agency's major regulatory programs." To date, OMB has not done so.

In response to the Subcommittee's March 2002 and March 2003 hearings, on June 11, 2003, I introduced the "Paperwork and Regulatory Improvements Act" (H.R. 2432), a bi-partisan bill to increase the probability of results in paperwork reduction, assist Congress in its review of agency regulatory proposals, and improve regulatory accounting. Section 6 of the bill includes requirements to improve regulatory accounting, such as: requiring agencies to submit information, where available, for OMB's annual regulatory accounting statements; requiring the annual regulatory accounting statement and associated report to be submitted "as part of" the President's Budget; and, requiring OMB to conduct a multi-agency study of regulatory budgeting.

In January 1996, OMB issued "Best Practices Guidances" to help standardize agency cost-benefit analyses of significant regulatory actions, as required by President Clinton's regulatory reviews Executive Order (E.O.) 12866. However, since it was in the form of nonbinding guidance to the agencies instead of requirements for agencies to follow, such as those in an OMB Circular, OMB did not enforce agency compliance. The result was that agency practices continued to substantially deviate from OMB's guidance, with some agencies not even estimating costs or benefits. In February 2003, OMB proposed a new OMB Circular A-4, "Regulatory Analysis," which was finalized on September 17, 2003. It should greatly improve the quality and consistency of agency cost-benefit analyses. In addition, it includes a helpful discussion of alternative regulatory approaches, including: different choices defined by statute, different compliance dates, different enforcement methods, different degrees of stringency, different requirements for different sized firms, different requirements for different geographic regions, performance standards rather than design standards, market-oriented approaches rather than direct controls, and informational measures rather than regulation (pp. 7-9).

The invited witnesses for the February 25, 2004 hearing are: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB; Thomas M.

Sullivan, Chief Counsel for Advocacy, SBA; William Kovacs, Vice President, Environment, Technology and Regulatory Affairs, U.S. Chamber of Commerce; Susan Dudley, Director, Regulatory Studies Program, Mercatus Center, George Mason University; Dr. Richard B. Belzer, President, Regulatory Checkbook; and, Joan Claybrook, President, Public Citizen.

Attachment

Laws Requiring Regulatory Accounting Reports and OMB Issuances

Date of Law	Due Date for OMB Report	Date of OMB Report	Required Content for OMB
9/30/96	9/30/97	9/97	(1) annual costs & benefits of Federal regulatory programs & of each major rule (2) impacts on private sector & State/locals (3) recommendations to reform/eliminate
10/10/97	9/30/98	1/99	same as prior year
10/21/98	with the President's Budget (2/7/00)	6/00	(1) accounting statement with annual costs & benefits of Federal rules & paperwork in the aggregate, by agency & agency program, & by major rule (2) associated report with impacts on small business, State/locals, etc. (3) recommendations for reform also: (4) OMB guidelines to agencies to standardize cost/benefit measures & format of accounting statements
9/29/99	with the Budget (4/9/01)	12/21/01	same as prior year
12/21/00	permanently with the Budget (2/4/02)	draft 3/18/02 final 12/18/02	same as prior year
	with the Budget (2/3/03)	draft 2/3/03 final 9/22/03	same as prior year
	with the Budget (2/2/04)	draft 2/13/04	same as prior year

Prepared for Congressman Doug Ose